

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---------------------------------|---|-----------|
| Fernando Benitez, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | 08 C 5174 |
| |) | |
| A & R Janitorial Service, Inc., |) | |
| |) | |
| Defendant. |) | |

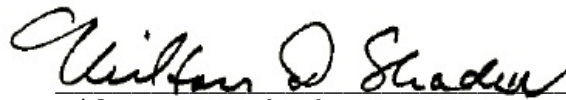
MEMORANDUM ORDER

A & R Janitorial Service, Inc. ("A&R") has filed its Answer to the Second Amended Complaint ("SAC") filed against it by its ex-employee Fernando Benitez ("Benitez"). This memorandum order is issued sua sponte to address some problematic aspects of that responsive pleading.

To begin with, Answer ¶ 3 challenges Benitez's invocation of supplemental jurisdiction under 28 U.S.C. § 1367. But the express allegations of the SAC confirm that Benitez's Count II claim, advanced under state law, does indeed arise out of the same operative facts and circumstances as Benitez's federal claim of age discrimination (see SAC ¶ 27). Accordingly Answer ¶ 3 is stricken, and unless A&R's counsel submits a filing on or before March 27, 2009 that supports a denial of the SAC ¶ 3 allegation, that allegation will be deemed to have been admitted.

One other aspect of the Answer requires correction: its persistent recital of the phrase "and therefore denies the allegations" or the like after A&R's counsel has set out a proper

disclaimer that complies with Fed.R.Civ.P. 8(b)(5) and thus establishes a deemed (not an actual) denial. That practice is of course oxymoronic, for a party cannot deny an allegation in good faith if it really lacks enough knowledge or information to support a belief about its truthfulness. Accordingly that phrase is stricken from Answer ¶¶ 15, 16, 20, 25 and 26.

A handwritten signature in cursive script, reading "Milton I. Shadur", written in black ink.

Milton I. Shadur
Senior United States District Judge

March 17, 2009